



FILE

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

November 16, 1998

CLIFFORD J. VILLA
ASSISTANT REGIONAL COUNSEL
U.S. EPA REGION 10, ORC-158,
1200 SIXTH AVENUE
SEATTLE, WA 98101

RE: Union Pacific Negotiations; November 9, 1998 Letter

Dear Cliff,

This letter briefly responds to your letter of November 9, 1998 which forwarded the comments of Roseanne Lorenzana regarding the October 20, 1998 draft Streamlined Risk Assessment prepared by the State of Idaho's contractor Terragraphics. In accordance with the November 16, 1998 deadline specified by your letter, Terra graphics has forwarded revised draft language to Ms. Lorenzana. It is my understanding that she will be unable to review the revisions until the end of the week. Upon review, the comments and responsive revisions appear to involve relatively minor issues or misunderstandings. Accordingly, while draft revisions have been provided as requested, a direct response to your letter itself is also necessary.

The concern expressed in your letter regarding Terragraphics' expenses and delays in this negotiation are misplaced. Direct and indirect responsibility for such expenses lie, respectively, with the State and Union Pacific. Neither the State or Union Pacific have expressed concern as to the appropriateness of Terragraphics expenses in preparing the risk assessment. We do have concerns as to the necessity and wisdom of making the risk assessment more extensive where such additional detail is not a legal requirement for an EE/CA and does not appear to have any tangible impact on the contemplated response actions. As to delay, I will only note that our contractor's responsiveness is not among the many sources of delay in this project.

Genuine strategic and technical issues and disagreements have arisen and been resolved between the parties on the government side of the table over the past four years of the Union Pacific negotiations. Further issues and disagreements will undoubtedly arise before we are finished. I strongly advocate that we continue to resolve such matters by convening problem solving meetings and conference calls between appropriate levels of technical, managerial and legal staff. Letters between legal counsel that direct, demand and threaten are an unwarranted and unprecedented means of conveying "comments" regarding draft technical documents in this negotiation.

Finally, I am hopeful your letter was not an attempt to establish some sort of negative record for purposes beyond the Union Pacific negotiation, such as influencing the upcoming discussions between EPA and the State regarding future human health risk assessment work for the Basin RI/FS. Such a record would not accurately reflect the positive and productive working

CLIFFORD J. VILLA

Page 2

November 16, 1998

relationships that we have all maintained during the Union Pacific negotiations. To the contrary, the success of EPA, Coeur d'Alene Tribe, Federal Trustees, State, Union Pacific and our respective contractors in working together in these negotiations should be viewed as a model for possible extension to broader Coeur d'Alene Basin issues. We have, and should, work positively together.

Sincerely,



Curt Fransen
Deputy Attorney General

cc: Tom Swegle
Howard Funke
Earl Liverman